

AMENDED IN ASSEMBLY MAY 6, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 216**

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**Introduced by Assembly Member Beall**

February 3, 2009

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An act to amend Sections 20104 and 20104.2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL’S DIGEST

AB 216, as amended, Beall. Public contracts: claims.

Existing law authorizes a public entity to compromise or otherwise settle any 3rd-party claim relating to a public works contract.

This bill would define “claim” for those purposes to mean a written demand or assertion by a contractor, a local agency, *including a* charter city, *except as specified*, or charter county ~~or other relief~~ with respect to the contract documents, as specified.

This bill would, for contracts entered into on or after January 1, 2010, provide for a mediation process ~~and binding arbitration process~~ for claim disputes over ~~\$100,000~~ \$50,000 between a contractor and a local agency, *including a* charter city, *except as specified*, or charter county that does not have an alternative dispute process, if those claims remain unresolved after a specified time period.

By requiring local agencies, charter cities, and charter counties to incorporate this mediation ~~and binding arbitration~~ process in specified claim disputes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 20104 of the Public Contract Code is  
2 amended to read:  
3 20104. (a) This article applies to all public works claims that  
4 arise between a contractor and a local agency, *including a charter*  
5 *city, except as specified in Section 1100.7, or charter county.*  
6 (b) *This article shall not apply to any claims resulting from a*  
7 *contract between a contractor and a public agency if the public*  
8 *agency has elected to resolve any dispute pursuant to Article 7.1*  
9 *(commencing with Section 10240) of Chapter 1 of Part 2.*  
10 ~~(b)~~  
11 (c) (1) “Public work” has the same meaning as in Sections 3100  
12 and 3106 of the Civil Code, except that “public work” does not  
13 include any work or improvement contracted for by the state or  
14 the Regents of the University of California.  
15 (2) “Claim” means a written demand or assertion by a contractor,  
16 local agency, charter city, or charter county, including change  
17 orders seeking an adjustment or interpretation of the terms of the  
18 contract documents, payment of money, extension of time, or other  
19 relief with respect to the contract documents, including a  
20 determination of disputes or matters in question between the local  
21 agency, charter city, or charter county and contractor arising out  
22 of or related to the contract documents of the performance of the  
23 work.  
24 ~~(e)~~  
25 (d) The provisions of this article or a summary thereof shall be  
26 set forth in the plans or specifications for any work that may give  
27 rise to a claim under this article.  
28 ~~(d)~~  
29 (e) This article applies only to contracts entered into on or after  
30 January 1, 2010.

1 SEC. 2. Section 20104.2 of the Public Contract Code is  
2 amended to read:

3 20104.2. For any claim subject to this article, the following  
4 requirements apply:

5 (a) The claim shall be in writing and include the documents  
6 necessary to substantiate the claim. Claims must be filed on or  
7 before the date of final payment. Nothing in this subdivision is  
8 intended to extend the time limit or supersede notice requirements  
9 otherwise provided by contract for the filing of claims.

10 (b) (1) For claims of less than ~~one hundred fifty~~ thousand dollars  
11 ~~(\$100,000)~~ (\$50,000), the local agency, charter city, charter county,  
12 or contractor shall respond in writing to any written claim within  
13 45 days of receipt of the claim, or may request, in writing, within  
14 30 days of receipt of the claim, additional documentation that the  
15 responding party reasonably and in good faith believes supports  
16 the claim or relates to defenses to the claim the local agency,  
17 charter city, charter county, or contractor may have against the  
18 claimant.

19 (2) If additional information is thereafter required, it shall be  
20 requested and provided pursuant to this subdivision, upon mutual  
21 agreement of the local agency, charter city, charter county, or  
22 contractor and the claimant.

23 (3) The local agency's, charter city's, charter county's, or  
24 contractor's written response to the claim, as further documented,  
25 shall be submitted to the claimant within 15 days after receipt of  
26 the further documentation or within a period of time no greater  
27 than that taken by the claimant in producing the additional  
28 information, whichever is greater.

29 (c) (1) This subdivision shall apply to all claims over ~~one~~  
30 ~~hundred thousand dollars (\$100,000)~~ *with fifty thousand dollars*  
31 *(\$50,000) involving* any local agency, charter city, *or* charter  
32 county, ~~or contractor~~ that does not have an alternative dispute  
33 process provided for by contract, *ordinance, or policy*.

34 (2) Upon submission of the claim, the applicable local agency,  
35 charter city, charter county, or contractor shall review the claim  
36 and make a determination within a 45-day period as to what portion  
37 of the claim, if any, is undisputed and shall satisfy that portion of  
38 the claim. If the local agency, charter city, or charter county  
39 requests additional information that it reasonably and in good faith  
40 believes is necessary to analyze the claim or any portion of the

1 claim, it shall submit a request for information within 30 days of  
2 the date on which it first receives the claim. Once a local agency,  
3 charter city, charter county, or contractor has received additional  
4 information, it shall have an additional 30-day period in which to  
5 satisfy any undisputed portion of the claim, and to identify those  
6 portions of the claim that it disputes. The maximum amount of  
7 time the local agency, charter city, charter county, or contractor  
8 may request additional information to extend the requirement that  
9 it provide a final written determination is 105 days from the date  
10 of the first submission of the claim, unless the parties mutually  
11 agree to extend the time limits set forth in this section.

12 (3) In the event that there is any portion of a claim that remains  
13 unresolved, either party may request a meet and confer conference  
14 within five days of exhausting the maximum allowable time, or  
15 the time mutually agreed upon pursuant to paragraph (2). Once a  
16 meet and confer conference has been requested, the conference  
17 shall be completed within 10 *scheduled within 20* days of the  
18 request, unless both parties agree to an extension of time.

19 (4) In the event there is any portion of a claim that remains  
20 unresolved and the meet and confer conference period has been  
21 exhausted, the party who submitted the claim, at its discretion,  
22 may demand mediation with the parties mutually agreeing to a  
23 mediator within 30 days from the date of the demand for mediation.  
24 If the parties are unable to mutually agree on a mediator, the parties  
25 shall utilize an alternative dispute resolution process to assist in  
26 the selection of a mediator. *Mediation pursuant to this section*  
27 *shall be for no less than four hours, the cost of which shall be*  
28 *shared equally between the parties. By mutual agreement, the*  
29 *parties may extend the length of the mediation beyond the minimum*  
30 *time set forth in this paragraph.*

31 ~~(5) If any portion of the claim remains unsettled after mediation,~~  
32 ~~the contractor and the local agency, charter city, or charter county~~  
33 ~~shall submit the dispute to binding arbitration, and shall follow~~  
34 ~~the same procedure for selecting an arbitrator as set forth in~~  
35 ~~paragraph (4) for the selection of a mediator.~~

36 ~~(6)~~  
37 (5) Failure by the local agency, charter city, or charter county  
38 to respond to a claim within the time periods set forth in this  
39 subdivision shall result in the claim being deemed approved in its  
40 entirety, and shall be processed for payment within five days from

1 the expiration of the time period in which the local agency, charter  
2 city, or charter county is required to act. Failure by the contractor  
3 to respond to a claim from the local agency, charter city, or charter  
4 county within the time periods prescribed in this subdivision shall  
5 result in the claim being approved. The parties may extend the  
6 time period for response by mutual agreement.

7 *(6) Failure by the local agency, charter city, or charter county*  
8 *to respond to a claim within the time periods set forth in this*  
9 *subdivision shall also result in a penalty, payable to the contractor,*  
10 *of 2 percent of the amount due per month for every month that*  
11 *payment is not made. In any action for the collection of funds*  
12 *wrongfully withheld, the prevailing party shall be entitled to*  
13 *reasonable attorney's fees and costs. The sanctions authorized*  
14 *pursuant to this section shall be separate from, and in addition to,*  
15 *all other remedies, either civil or administrative.*

16 (d) This article does not apply to tort claims and nothing in this  
17 article is intended nor shall be construed to change the time periods  
18 for filing tort claims or actions specified by Chapter 1 (commencing  
19 with Section 900) and Chapter 2 (commencing with Section 910)  
20 of Part 3 of Division 3.6 of Title 1 of the Government Code.

21 (e) Exercising rights established under this section supersedes  
22 any and all notice requirements under Part 3 (commencing with  
23 Section 900) of Division 3.6 of Title 1 of the Government Code.

24 *(f) For purposes of this section, "local agency" includes a*  
25 *charter city, except as specified in Section 1100.7, or a charter*  
26 *county.*

27 SEC. 3. If the Commission on State Mandates determines that  
28 this act contains costs mandated by the state, reimbursement to  
29 local agencies and school districts for those costs shall be made  
30 pursuant to Part 7 (commencing with Section 17500) of Division  
31 4 of Title 2 of the Government Code.